

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1026 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VALLABHBHAI S PATEL

Versus

AHMEDABAD DISTRICT CO-OP. BANK LTD.

Appearance:

1. Special Civil Application No. 1026 of 2003
LOPA M BHATT for Petitioner No. 1-33
MR SAURABH G AMIN for Respondent No. 1
MR BR PARIKH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 09/08/2004

ORAL JUDGEMENT

With the consent of the parties, the matter is

taken up for final hearing today when the matter is heard for interim relief.

2. The short facts of the case are that the petitioners are the members of the respondent No.2 society. The respondent No.1 Bank filed the Lavad Suit No.825/92 for recovery of amount of Rs.83,45,325.88ps. It is the case of the respondent Bank that the society was impleaded as party defendant and the Nominee has ultimately passed the judgment and award on 21.4.98 whereby the suit is allowed as mentioned in the judgment. The petitioners, who are the members of the respondent No.2 society, preferred appeal before the Gujarat State Coop.Tribunal. However, as the petitioners were not party to the proceedings of the suit but as the petitioners were aggrieved by the decision of the Ld.Nominee in suit, an application for leave to prefer appeal being Application No.19/00 was also preferred by the petitioners. Since there was delay in preferring the appeal the petitioners had also filed application for condonation of delay. The tribunal heard the application for leave to prefer appeal and for the reasons recorded in the order, dated 31.12.2002 dismissed the application for leave to prefer appeal observing that the members were not impleaded as party in suit and there is no privity of contract between the petitioners herein who were the applicants before the tribunal and the bank and the application is not granted.

3. Upon hearing Ms.Lopa Bhatt for petitioners, Mr.Amin for respondent No.1 Bank and Mr.Parikh for respondent No.2 society, it appears that there is no dispute on the point that the present case is covered by the decision of this court in the matter of Sureshbhai Babubhai Sunara vs Ahmedabad Dist.Coop.Bank Ltd reported in 2002(3) GLH 176 whereby it is laid down by this court that when the members of the Housing Coop.Society are allowed to occupy the property and on account of some debt outstanding against the society which is to be recovered from the property which is under the occupation of the members, it can not be said that the members are not affected or aggrieved by the award of the Nominee and therefore in my view the impugned order of the tribunal passed below application for leave to defend can not be sustained in the eye of law and deserves to be quashed in view of the decision of this court.

4. However, Mr.Amin, Ld.advocate appearing for the respondent Bank submitted that even if the matter is to be remanded to the lower court, the petitioners should be directed to deposit some amount out of outstanding loan

subject to the outcome of the proceedings before the tribunal or the nominee. The Ld.advocate for the petitioners under the instructions of her clients states that so far as the petitioner Nos 3 & 27 are concerned, they have already paid the full amount and she has placed on record the certificate showing that the full amount of loan is paid by the said petitioners. So far as other petitioners are concerned, the Ld.advocate for the petitioners states that to show the bonafides on the part of the petitioners, the petitioners will deposit amount of Rs.25,000/- each barring petitioner Nos 3 & 27, however, two months time may be granted to the petitioners to deposit the said amount.

5. In view of the above, I find that the following directions shall meet with the ends of justice:

(i) The impugned order of the tribunal, dated 31.12.2002 is quashed and set aside on the condition that the petitioners excluding petitioner Nos 3 & 27 deposit the amount of Rs.25,000/- each within a period of two months from today, i.e. Rs.10,000/- each within a period of one month from today and remaining balance of Rs.15,000/each within a period of one month thereafter with the respondent No.1-Bank.

(ii) After the amounts are so deposited by the petitioners concerned, it would be open to the petitioners to move the tribunal for hearing of appeal on merits in accordance with law.

(a) It is made clear that rights and contentions of both sides in the appeal before the tribunal shall remain open and the tribunal shall decide the appeal as early as possible preferably within a period of four months from the date of receipt of writ of this court.

(b) It is made clear that in case if any of the petitioners excluding petitioner Nos 3 & 27 fails to deposit the amount as per conditions imposed earlier, it would be open to the respondent No.1-Bank to execute the award in accordance with law qua concerned petitioner.

(c) It is also made clear that the condition to deposit the amounts is imposed only to show the bonafides of the petitioners and the rights and liabilities of both the parties including by and against petitioner Nos 3 & 27 shall remain open in the proceedings of appeal before the tribunal and the payment which may be made by the petitioner in compliance of the aforesaid conditions shall be subject to further orders which may be passed by

the tribunal or in the subsequent proceedings in accordance with law.

6. Petition is disposed of accordingly. Rule is made absolute to the aforesaid extent. In the facts and circumstances, there shall be no costs.

9.8.04 (JAYANT PATEL, J)